

to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) This paragraph does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a conductor. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(g) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.403 of this chapter (“Voluntary referral policy”) to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of a conductor who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 219.403 of this chapter a provision that, at least with respect to a certified conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

#### § 242.117 Vision and hearing acuity.

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying

any person as a conductor for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in this section.

(c) In order to make the determination required under paragraph (b) of this section, a railroad shall have on file either:

(1) A medical examiner’s certificate that the individual has been medically examined and meets these acuity standards; or

(2) A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that:

(i) The person can nevertheless be certified under certain conditions; or

(ii) The person’s acuity is such that the person cannot safely perform as a conductor even with conditions attached.

(d) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician’s assistant such that:

(1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.

(e) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in this section or to meet a lower threshold determined by the railroad’s medical examiner to be sufficient to perform as a conductor, that fact shall be noted on the certificate issued in accordance with the provisions of this part.

(f) Any person with such a certificate notation shall use the relevant corrective device(s) while performing as a conductor unless the railroad’s medical examiner subsequently determines in writing that the person can safely perform without using the device.

(g) Fitness requirement: In order to be currently certified as a conductor,

except as permitted by paragraph (j) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and Appendix D to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(h) Except as provided in paragraph (j) of this section, each person shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses; or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in Appendix E to this part.

(i) Except as provided in paragraph (j) of this section, each person shall have a hearing test or audiogram that shows the person's hearing acuity meets or exceeds the following thresholds: The person does not have an average hearing loss in the better ear greater than 40 decibels with or without use of a hearing aid, at 500 Hz, 1,000 Hz, and 2,000 Hz. The hearing test or audiogram shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (OSHA);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of and are maintained and used in accordance with ANSI S3.6–2004 "Specifications for Audiometers."

(j) A person not meeting the thresholds in paragraphs (h) and (i) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine

that person's ability to safely perform as a conductor. In accordance with the guidance prescribed in Appendix D to this part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now safely perform as a conductor. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (h) and (i) of this section, the person has the ability to safely perform as a conductor, the person may be certified as a conductor and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(k) As a condition of maintaining certification, each certified conductor shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent performance as a conductor.

#### § 242.119 Training.

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to the initial issuance of a certificate to any person as a conductor, shall determine that the person has, in accordance with the requirements of this section, the knowledge to safely perform as a conductor in each type of service that the person will be permitted to perform.